

October 30, 2003
DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Judicial Watch, Inc.

Date of Filing: September 24, 2003

Case Number: TFA-0039

On September 24, 2003, Judicial Watch, Inc. (the Appellant), filed an Appeal from a final determination that the Freedom of Information/Privacy Act Group (FOI/PA) of the Department of Energy (DOE) issued on August 19, 2003. That determination concerned a request for information submitted by the Appellant pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. If the present Appeal were granted, FOI/PA would be required to conduct a further search for responsive documents.

Background

On August 1, 2000, the Appellant submitted a FOIA request for all documents that refer to

Agreements(s), contracts(s), concession(s), compensation(s), loan(s), guarantee(s), assistance, cooperation, consideration, lease(s), transfer(s), sale(s), aid, support, inducement(s), influence, reward(s), stimulus(i), solicitation(s), benefit(s), gift(s), gratuity(ies), remuneration, and/or promise(s), made or entered into since September 11, 2001, with the governments of:

Egypt	Israel	Saudi Arabia	Jordan
Qatar	Bahrain	Yemen	Oman
Iran	Turkey	Lebanon	Libya
Sudan	Djibouti	Somalia	Ethiopia
UAE	Kuwait	Cyprus	North Korea
South Korea			

in exchange for support, cooperation and/or consideration for the "War on Terror," to include but not be limited to the liberation of Afghanistan and the hunt for Taliban and Al Qaeda, and/or the Bush administration's stated policy goal of the disarmament of Iraq in accordance with the United Nations resolutions.

Request Letter dated January 6, 2003, to Abel Lopez, FOIA/PA Division, DOE, from Christopher J. Farrell, Judicial Watch, Inc. On February 5, 2003, FOI/PA responded that the search of the files of the Office of Energy Assurance, the Office of Policy and International Affairs, and the National Nuclear Security Administration (NNSA) yielded no responsive documents. Determination Letter dated February 5, 2003, from Abel Lopez, FOI/PA, DOE, to Christopher Farrell, Judicial Watch, Inc. A search of the files of the Office of the Secretary had not been completed at the time of the determination. *Id.* This Appeal concerns the determination made regarding the search of the Office of the Secretary's files. Determination Letter dated August 19, 2003, from Abel Lopez, FOI/PA, DOE, to Christopher Farrell, Judicial Watch, Inc.

On September 24, 2003, the Appellant appealed the August 19, 2003 determination to our Office. Appeal Letter dated September 16, 2003, from Christopher J. Farrell, Judicial Watch, Inc., to Director, Office of Hearings and Appeals (OHA), DOE. In the Appeal, the Appellant argues that because DOE is at the center of national and international energy policies used by the federal government, it is likely that documents responsive to the request exist. *Id.* The Appellant cites an article in the *New York Times* which stated that "The United States, seeking to ensure Turkish military cooperation in any war against Iraq, is offering at least \$4 billion to compensate Turkey for economic damage it might suffer as a result of playing an active role in an American-led coalition." *Id.* at 1-2.

Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord *Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. See, e.g., *Glen Milner*, 17 DOE ¶ 80,132 (1988).

We have contacted FOI/PA and the Office of the Secretary to determine what type of search was conducted. The Office of the Executive Secretariat indicated that it completed a "string search" of all documents both to and from the Secretary, Deputy Secretary, and Under Secretary. Electronic Mail Message sent October 20, 2003, from Sheila Brooks, Office of the Secretary, to Janet R. H. Fishman, OHA. A string search is a computerized search using key words to conduct the search. The search utilized the names of the countries for which the Appellant was requesting information and also the types of

documents the Appellant was seeking. Voice Mail Message from Sheila Brooks to Janet R. H. Fishman, October 21, 2003. *Id.* All documents both to and from the Office of the Secretary reside in the computerized database which was searched. The Office was unable to find anything responsive. Based on the search that the Office of the Secretary performed, we are convinced that this Office followed procedures which were reasonably calculated to uncover the material sought by the Appellant in its request. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Judicial Watch, Inc., on September 24, 2003, Case No. TFA-0039, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provision of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought either in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: October 30, 2003

